IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO.1452 OF 2005
IN
SPECIAL CIVIL APPLICATION NO.12066 OF 2004
WITH
LETTERS PATENT APPEAL NO.1453 OF 2005
IN
SPECIAL CIVIL APPLICATION NO.12001 OF 2004
WITH
CROSS OBJECTION NO.166 OF 2005
IN
LETTERS PATENT APPEAL NO.1453 OF 2005
IN
SPECIAL CIVIL APPLICATION NO.12001 OF 2004
WITH
CIVIL APPLICATION NO.11143 OF 2005
IN
LETTERS PATENT APPEAL NO.1452 OF 2005
IN
SPECIAL CIVIL APPLICATION NO.12066 OF 2004
WITH
CIVIL APPLICATION NO.11145 OF 2005
IN
LETTERS PATENT APPEAL NO.1453 OF 2005
IN
SPECIAL CIVIL APPLICATION NO.12001 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT - Appellant
Versus
BHARAT CHAMPAKBHAI & ORS. - Respondents

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= ***Appearance*:**

MR KAMAL B. TRIVEDI, ADVOCATE GENERAL, WITH MS SANGEETA VISHEN, ASSISTANT GOVERNMENT PLEADER for Appellant in Letters Patent Appeal Nos.1452 of 2005 and 1453 of 2005 as well as Civil Applications filed therein and in Cross Objections.

MR SN SHELAT, SENIOR ADVOCATE, and MR YN OZA, SENIOR ADVOCATE, WITH MR RJ OZA, ADVOCATE, for Respondent Nos.1 to 3 in Letters Patent Appeal No.1452 of 2005 and Civil Application filed therein.

MR UI VYAS, ADVOCATE, for Respondent No.4 in Letters Patent Appeal No.1452 of 2005 and Civil Application filed therein AND for Respondent No.28 in Letters Patent Appeal No.1453 of 2005 and Civil Application filed therein and Cross Objection No.166 of 2005

MR SH SANJANWALA, SENIOR ADVOCATE, WITH MR RS SANJANWALA, MR SHAMIK SANJANWALA & MR DILIP KANOJIYA, ADVOCATES, for respondent Nos.1 to 27 in Letters Patent Appeal No.1453 of 2005 and Civil Application filed therein as well as in Cross Objection No.166 of 2005.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10-13-14-15/11/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Both these appeals are directed against common judgment dated August 11, 2005 rendered by the learned Single Judge in Special Civil Application No.12001 of 2004 and Special Civil Application No.12066 of 2004, which were filed by

the owners of the lands situated at Villages Bharthana, Althan and Umra, Taluka: Choryasi, District: Surat, challenging notification dated July 22, 2004 issued by the State Government proposing to modify the Draft Development Plan of Surat Urban Development Authority in exercise of powers conferred by the provisions of Section 17(1)(a)(ii) of the Gujarat Town Planning & Urban Development Act, 1976 ("the Act" for short) and notification dated September 28, 2004 issued under Section 17(1)(c) of the Act, by which their lands were designated for educational use under Section 12(2)(o) of the Act. As common questions of facts and law arise for consideration of the Court in the appeals and cross-objections, they are disposed of by this common judgment.

2. By filing the above-numbered appeals under Clause 15 of the Letters Patent, the State of Gujarat has challenged legality of common judgment dated August 11, 2005 rendered by the learned Single Judge in Special Civil Application No.12001 of 2004 and Special Civil Application No.12066 of 2004 by

which notification dated September 28, 2004 of the Government of Gujarat, Urban Development and Urban Housing Department, Sachivalaya, Gandhinagar, deleting the reservation of the lands bearing Block Nos.108 to 113, 114/p, 115, 116/p, 117 to 124/p, 126/p, 127, 128, 129/p, 130/p, 131/p, 132, 133, 134/p, 147/p, 148/p, 149, 150 and 168 of Village Bharthana-Vesu and Block Nos.99/p, 108/p, 109/p, 110/p, 111, 112, 113/p, 114/p, 115/p and 127/p of Village Althan, for "Education Complex of South Gujarat University" and designating those lands for "Educational Use" under Section 12(2)(o) of the Act, is set aside on the ground that there was no material available on the File, on the basis of which, the decision could have been taken to designate the lands for 'educational use'.

3. The petitioners in Special Civil Application No.12001 of 2004 have filed above numbered Cross- Objections against the findings recorded by the learned Single Judge. Those findings are; (1) the plea that the lands of the petitioners could not have been designated for educational use

because of the decision of the High Court in Special Civil Application No.6519 of 1998 declaring that the reservation of the lands for South Gujarat University had lapsed, has no substance; (2) the contention that power under Section 12(2)(o) of the Act to designate the lands of the petitioners for educational use could not have been exercised without recording satisfaction in terms of Section 17(2) of the Act that such authority was in a position to acquire the lands whether by agreement or compulsory acquisition within ten years from the date on which final development plan came into force, is devoid of merits; (3) Section 12(2)(o) of the Act empowers the State Government to designate the use of the lands of the petitioners even after the judgment was rendered by the High Court in Special Civil Application No.6519 of 1998; (4) the plea that by designating the lands for educational use under Section 12(2)(o) of the Act, the lands have been reserved though the reservation for the University had failed, has no substance; (5) the plea that the lands of the petitioners were designated for educational use *mala fide* cannot be

accepted; and, (6) the contention that in view of the earlier decision of the High Court, designation of the lands could have been made only for residential, industrial, commercial, or recreational purpose, but they could not have been designated under Section 12(2)(o) of the Act for educational use, has no substance.

4. The three respondents in Letters Patent Appeal No.1452 of 2005 and the respondent Nos.1 to 27 in Letters Patent Appeal No.1453 of 2005 are the owners of the lands situated at Villages Bharthana-Vesu, Althan and Umra, Taluka: Choryasi, District: Surat, survey/block numbers of which have been mentioned earlier. The Gujarat Town Planning & Urban Development Act, 1976 came into force on February 1, 1978. Under the said Act, Surat Urban Development Authority ["SUDA" for short] is constituted. SUDA prepared a Draft Principal Development Plan whereby the lands belonging to the contesting respondents were designated for residential purpose. SUDA published the said plan in the Official Gazette on February 7, 1980 and invited objections to the same.

The objections received were considered by SUDA. After considering the objections, the draft development plan was forwarded to the State Government on August 4, 1981. The State Government desired to make modifications therein and proposed to reserve the lands of the contesting respondents for education complex of South Gujarat University. The State Government, therefore, published the draft development plan with proposed modifications in the Official Gazette on April 13, 1985 and invited objections from the landowners whose lands were proposed to be reserved for education complex of South Gujarat University. After taking into consideration the suggestions and objections received, the State Government accorded sanction to the draft development plan in the modified form on January 31, 1986 under Section 17(1)(c) of the Act whereby the lands in question were reserved for education complex of South Gujarat University. The sanction accorded under Section 17(1)(c) of the Act was notified in the Official Gazette and final development plan was brought into force with effect from March 31, 1986. Section 20 of the Act, *inter*

alia, provides that the Area Development Authority or any other authority for whose purpose the land is designated in the final development plan, for any purpose specified in clauses (b), (d), (f), (k), (n) or (o) of subsection 2 of Section 12 of the Act, may acquire the lands either by agreement or under the provisions of the Land Acquisition Act, 1894, and if the land is not acquired by agreement within a period of ten years from the date of coming into force of the final development plan or proceedings under the Land Acquisition Act, 1894, are not commenced within such period, the owner may serve a notice on the authority concerned requiring the authority to acquire the lands, and if within six months from the date of service of notice, the lands are not acquired or no steps are commenced for its acquisition, the designation of the lands as aforesaid shall be deemed to have lapsed.

5. The South Gujarat University did not take any step for the purpose of acquiring the lands of the respondents, either by agreement or under the provisions of the Land Acquisition Act, 1894, within

a period of ten years from the date of coming into force of the final development plan. Therefore, the contesting respondents served notice on the South Gujarat University requiring it to acquire the lands, but the South Gujarat University failed to acquire the lands or to take steps for acquisition within six months from the date of service of notice. Section 21 of the Act, *inter alia,* provides for revision of development plan at least once in ten years. The Development Authority undertook exercise to revise the development plan. In the revised development plan also, the lands were sought to be reserved for education complex of South Gujarat University. Therefore, the petitioners in Special Civil Application No.12001 of 2004 filed Special Civil Application No.6519 of 1988 and claimed declaration that the action on the part of the authorities to re-reserve the lands of the petitioners situated at Villages Bharthana, Althan and Umra for education complex of South Gujarat University in purported exercise of powers under Section 21 of the Act, was patently bad, illegal, arbitrary, unreasonable, unfair and violative of

Articles 14, 19 and 300-A of the Constitution. The petitioners also sought issuance of writ of mandamus restraining the respondents from acting upon the purported reservation of the lands for South Gujarat University under Section 21 of the Act and further prayed to declare that the reservation of the lands of the petitioners, in the final development plan of SUDA, for the South Gujarat University had lapsed, as no action had been taken by the authorities to acquire the lands as required by Section 20 of the Act. It may be mentioned that the landowners from Bhavnagar and Vadodara had also filed similar petitions claiming a declaration that the reservation of the lands belonging to them for educational purpose of University had lapsed entitling them to use the lands for their benefit by development and construction in accordance with other regulatory provisions of the Act, which were heard together with Special Civil Application No.6519 of 1998 filed by the petitioners, who are the petitioners in Special Civil Application No.12001 of 2004. The Division Bench of this Court by judgment dated November 24, 2000 passed following

operative order in Special Civil Application No.6519 of 1998 instituted by the petitioners :

> *"105. Special Civil Application Nos.6461 of 1996 and 6590 of 1998 filed by the land-owners in Surat City are allowed. Their lands reserved having not been acquired within the prescribed time under Section 20(2) of the Town Planning Act, would stand dereserved, irrespective of issuance of proposed revised development plan or the final revised development plan under Section 21 of the Act.*
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> *Rule in both the petitions is made absolute.*
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> *No further orders need be passed in these applications."*

6. It may be mentioned that Special Civil Application No.4427 of 1992 was filed by Bhavnagar University seeking a direction from the Court against the State Government and the landowners that the lands, which were subject matter of the petitions filed by the landowners, should be kept re-reserved for future need of the University. The said petition filed by Bhavnagar University was disposed of by the Division Bench in the following terms:

> *"102. Special Civil Application No.4427 of 1992 filed by the Bhavnagar University and Special Civil Application No.4733 of 1992 filed jointly by a Member of Senate and a student of Bhavnagar University are dismissed.*
>
> *Rule is discharged.*
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> *Interim relief, if any, granted earlier stands vacated."*

7. Feeling aggrieved, Bhavnagar University preferred an appeal before the Supreme Court. The Supreme Court dismissed the same by judgment dated December 3, 2002, rendered in ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Ors.,*** which is reported in ***(2003) 2 SCC 111.***

8. Meanwhile, the SUDA prepared and published a Draft Revised Development Plan in the official gazette on February 29, 1996 and invited suggestions and objections. After considering the objections, the SUDA submitted the Draft Revised Development Plan to the State Government for sanction. The State Government was of the opinion that modifications in the plan were necessary in view of the decision of

the Supreme Court. Therefore, in exercise of powers conferred by the proviso to sub-clause (ii) of clause (a) of Section 17(1) of the Act, the State Government published the said modifications in the Government Gazette on July 22, 2004 and invited suggestions and objections to the same. The petitioners filed their objections. Apprehending that in spite of their objections, the modifications would be sanctioned by the State Government, the petitioners filed Special Civil Application No.12001 of 2004 and prayed to declare that the action on the part of the State Government of issuing notification dated July 22, 2004 under the purported exercise of powers conferred by proviso to clause (ii) of clause (a) of sub-section (1) of Section 17 of the Act is patently bad, illegal, *de hors* the provisions of the Act and is *ultra vires.* The petitioners also prayed to issue a writ of *certiorari* to quash notification dated July 22, 2004 and direct the State Government to treat the lands of the petitioners as having been designated in the residential zone. The petitioners further prayed to prohibit the State Government from carrying out modifications by which it was proposed

to designate their lands for educational use under Section 12(2)(o) of the Act. The petitioners also prayed to issue a writ of mandamus directing the respondents to act according to law and give effect to the judgment rendered by the High Court, which is reported in *2001 (2) G.L.H. 294* and the judgment rendered by Supreme Court, which is reported in *(2003) 2 SCC 111,* by designating their lands in residential zone and allow them to develop the lands for residential purpose or any other purpose as desired by them.

9. During the pendency of the petition, the State Government came out with final notification dated September 28, 2004 designating the lands in question for educational use under Section 12(2)(o) of the Act. The petitioners, therefore, moved an amendment application seeking permission of the Court to challenge the said notification. The petitioners were permitted to amend the petition and, therefore, the petitioners also challenged the validity of final notification dated September 28, 2004 issued under Section 17(1)(c) of the Act by

which their lands were designated for educational use under Section 12(2)(o) of the Act.

10. The case of the petitioners in the petition was that once the High Court and the Supreme Court had struck down the action of the Government, reserving the lands in question for the purpose of education complex of South Gujarat University, it was not open to the State Government to once again designate the lands in question for educational use. According to the petitioners, the lands reserved for residential use can also be developed for the bank, hostel, educational institutions, such as schools, colleges, etc. and, therefore, there was no need or question of designating the lands in question only for educational use. What was maintained by the petitioners was that in the similar situation, the Government released the lands, which were reserved for Bhavnagar University by designating the same for residential use and, therefore, by designating the lands of the petitioners for educational use, the petitioners were discriminated, which was violative of Article 14 of the Constitution. It was averred by the

petitioners that the lands for the use of educational purpose were/are available in abundance, not only for the present requirements, but also for future requirements and, therefore, the designation of their lands for educational use deserved to be set aside. Therefore, the respondents in Letters Patent Appeal No.1453 of 2005 filed Special Civil Application No.12001 of 2004 and claimed the reliefs, which are referred to earlier.

11. The three respondents in Letters Patent Appeal No.1452 of 2005 filed Special Civil Application No.12066 of 2004 on the grounds, which were mentioned by the petitioners in Special Civil Application No.12001 of 2004. In addition, it was also contended by them that at the behest of Mr.Surendrabhai Patel, who was treasurer of Bhartiya Janata Party, the notification dated July 22, 2004 was issued proposing to designate their lands for educational use and, therefore, the same was liable to be set aside. Therefore, the respondents in Letters Patent Appeal No.1452 of 2005 filed Special Civil Application No.12001 of 2004 filed the

petition and claimed the reliefs which are referred to earlier.

12. An affidavit-in-reply dated February 22, 2005 was filed by Mr.V.D.Vaghela, Officer on Special Duty & Ex Officio Deputy Secretary, Urban Development & Urban Housing Department, Sachivalaya, Gandhinagar, justifying the notification dated July 22, 2004 proposing to designate the lands of the petitioners for educational use under Section 12(2)(o) of the Act and mentioning, *inter alia,* that after taking into consideration all the relevant factors, the State Government had decided that the proposed modification was necessary in wider social interest for a long term perspective of development. It was also mentioned in the reply that the Government had taken a policy decision, which was not liable to be interfered with by the Court in exercise of powers under Article 226 of the Constitution of India.

13. The learned Single Judge formulated the following challenges in the two petitions:

(a) The first aspect of the challenge is with respect to the power of the Government to provide for designation of the land in question for educational use in face of the decision of this Court as well as the Hon'ble Supreme Court in earlier round of litigation;

(b) The second limb of arguments of the petitions is that in view of the statutory provisions and, in particular, in view of the provisions contained in Section 12(2)(o), Section 17(1) and Section 20(1) read with Section 21 of the said Act, there is no possibility of designating the lands in question for educational use;

(c) Another area of controversy between the parties is with respect to the contention of the petitioners that the decision of the Government suffers from legal and factual malice. That the entire area is surrounded by residential development and the proposal made by the SUDA way back in 1980's for designating the land in question for residential use and, therefore, it was not open for the Government to provide for the designation solely for the purpose of educational use without there being any material on record.

14. After hearing the learned counsels for the parties, the learned Single Judge rejected the contention urged on behalf of the petitioners that only five zones, i.e. residential, industrial,

commercial, agricultural and recreational zones, were envisaged under the Act and that no reservation or designation can be made for any other purpose. The learned Single Judge further held that when the reservation made for the purpose of South Gujarat University was struck down by this Court, which decision was confirmed by the Supreme Court, the entire issue was at large before the Government for consideration of regulating the development of the lands in terms of the provisions of the Act and it was open to the Government to consider whether the lands in question should be placed in such zone for development as found necessary in the interest of proper development of the area. According to the learned Single Judge, there was no mandate of the Court or the Legislature to provide that once the reservation had lapsed, the landowners were free to use their lands without any restriction. The learned Single Judge also held that the plea of *mala fide* raised in Special Civil Application No.12066 of 2004 had no substance. However, in order to examine the plea raised by the petitioners that the decision of the Government to designate the lands in question

for educational purpose was arbitrary for want of sufficient material, the learned Single Judge summoned the relevant Government Files for his perusal. Accordingly, the Files were made available by the learned counsel for the Government. A perusal of the Files by the learned Single Judge indicated that by letter dated October 22, 2003, the Chief Town Planner, Gujarat State, had recommended that educational purpose is permissible in residential zone and, therefore, the lands be continued in residential zone. It was also noticed by the learned Single Judge that a note was placed before the Minister concerned on April 23, 2004 suggesting that after releasing the lands from reservation for South Gujarat University, the same should be placed in residential zone. However, what was noted by the learned Single Judge was that thereafter the File was placed before the Minister concerned, who on July 21, 2004 directed to designate the lands for educational zone in terms of Section 12(2)(o) of the Act. Under the circumstances, the learned Single Judge was of the view that the SUDA had from the very beginning suggested that the lands be placed in

residential zone, but while taking the policy decision to designate the lands for educational use, no material was placed before the Government. The learned Single Judge further noticed that in the affidavit-in-reply of Mr.Vaghela, some justification was sought to be offered for designating the lands for educational use, but no justification was available on the Files. The learned Single Judge further noticed that even after issuing the preliminary notification dated July 22, 2004, except the suggestions and objections, there was no material on record, which could have augmented the view of the Government and, therefore, the notification dated July 22, 2004 proposing to designate the lands of the petitioners for educational purpose was liable to be quashed. In view of the above referred to conclusions, the learned Single Judge has quashed final notification dated September 28, 2004 designating the lands of the petitioners for educational use under Section 12(2)(o) of the Act by judgment dated August 11, 2005, giving rise to above numbered Letters Patent Appeals and Cross Objections.

15. Mr.Kamal B. Trivedi, learned Advocate General for the appellant, contended that the learned Single Judge erred in quashing the notification dated September 28, 2004 designating the lands of the respondents for educational use on the ground that there was no material before the State Government, on the basis of which said decision could have been taken because what is required to be seen is the end and not the means so long as the means and the end do not smack of irrationality causing avoidable hardship to any section of the society and, therefore, the impugned judgment deserves to be set aside. It was argued that in such cases, a liberal and pragmatic approach should be adopted keeping the scale judiciously tilted in favour of the larger public interest without compromising the legal aspect. It was contended that as individual rights and interests are bound to be subordinated to the wider social interest in such matters and public interest would have overriding effect over the individual interest, the prayers made in the appeals should be accepted. What was maintained by the learned Advocate General

for the appellant, was that what weighed with the State Government in issuing the notification was public interest at large which prompted the State Government to classify the lands in question for educational use and, therefore, the notification should not have been set aside by the learned Single Judge. It was argued that a Government functions by taking decisions on the strength of the views and suggestions expressed by various officers at different levels, which ultimately attains finality at the hands of the Minister concerned and, therefore, the notification which was impugned in the petitions, should not have been set aside solely on the ground that there was no justification to designate the lands for educational use nor any exercise was undertaken by any body at all, which enabled the Government to reasonably come to the conclusion that it was necessary to designate the lands for educational use. Placing reliance on "A Study on Assessment of Educational Need in Surat Urban Development Authority (SUDA) Area for the Year 2011' prepared by School of Planning, CEPT University, Ahmedabad, which was permitted to be

produced as additional evidence vide a detailed order dated March 23, 2006 rendered in above numbered appeals, it was argued that the learned Single Judge was not justified in quashing the notification dated September 28, 2004 designating the lands in question for educational use on the ground that there was no material before the Government. It was asserted that the designation of the lands in question in development plan providing for educational use was absolutely justified as well as warranted in view of the need to establish educational institutions, such as schools, colleges, etc. and, therefore, the two appeals filed by the State should be allowed.

16. Mr.S.H.Sanjanwala, Mr.S.N.Shelat and Mr.Y.N. Oza, learned Senior Advocates for the original petitioners, contended that a statutory authority cannot be permitted to support its order by relying on or on the basis of statements made in the affidavit *de hors* the order or for that matter *de hors* the record and, therefore, the final report submitted by the School of Planning, CEPT

University, Ahmedabad, should not be taken into consideration while deciding the appeals filed by the State Government. It was argued that there was no material before the Government to enable it to come to the conclusion that it was necessary to designate the lands in question for educational use and, therefore, the judgment impugned in the appeals deserves to be confirmed. What was maintained by the learned Senior Advocates for the petitioners was that the decision to designate the lands in question for educational use is not only arbitrary and irrational, but is outrageous and, therefore, the appeals should not be accepted. In support of these submissions, the learned Senior Advocates for the original petitioners, placed reliance on (1) ***Banglore Development Authority & Ors. vs. R. Hanumaiah & Others, JT 2005 (12) SC 64***; (2) ***S.N.Chandrashekhar & Anr. vs. State of Karnataka & Ors., JT 2006 (2) SC 202***; (3) ***Hindustan Petroleum Corporation Limited vs. Darius Shapur Chenai & Ors., A.I.R. 2005 SC 3520***; (4) ***Rameshwar Prasad & Ors. vs. Union of India & Anr., JT 2006 (1) SC 457,*** and (5) ***Atyant Pichhara Barg Chhatra Sangh & Anr.***

vs. Jharkhand State Vaishya Federation & Ors., JT 2006 (7) SC 514.

17. This Court has heard the learned Senior Advocates for the parties at length and in great detail. The learned Advocate General for the appellant in the two appeals could not dispute the finding recorded by the learned Single Judge in the impugned judgment that the Files did not contain any material on the basis of which the decision was taken to designate the lands for educational purpose. In view of the specific contention raised by the petitioners that the decision was taken by the Minister concerned to designate the lands for educational use, though there was no material before him, the learned Single Judge had thought it fit to summon the relevant Files. The relevant Files were produced before the learned Single Judge and on perusal of the same, the learned Single Judge noticed that there was no material before the Minister concerned on the basis of which, the decision could have been taken to designate the lands for educational use. Thus, there is no manner

of doubt that the decision to designate the lands for educational use was not based on relevant factors. Even the Chief Town Planner, Gujarat State, by his letter dated October 22, 2003, recommended that the educational purpose was permissible in residential zone. The record would further show that thereafter a note was placed before the Minister concerned on April 23, 2004 suggesting that after releasing the lands from the reservation, they should be placed in residential zone. However, without there being any further material, the Minister concerned directed on July 21, 2004 to designate the lands in question for educational zone in terms of Section 12(2)(o) of the Act. It is true that in the affidavit-in-reply filed by Mr.Vaghela, some justification was sought to be offered in support of the said decision, but as rightly held by the learned Single Judge, the said justification was not available on the Files. Even after issuing preliminary notification dated July 22, 2004, except the suggestions and objections which were considered, there was no material on record, which could have augmented the view of the

Government that it was necessary to designate the lands for educational use.

18. In ***State of NCT of Delhi & Anr. vs. Sanjeev alias Bittoo, (2005) 5 SCC 181,*** the law relating to judicial review of administrative action and grounds for judicial review have been re-stated. According to the Supreme Court, administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature and the scope of judicial review of administrative orders is rather limited. Having stated that the scope of judicial review of administrative order is limited, the Supreme Court has held that the consideration is limited to the legality of the decision-making process and not legality of the order *per se* and the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. After noticing the present trend of judicial opinion to restrict the doctrine of immunity from judicial

review to those classes of cases which relate to the deployment of troops, entering into international treaties, etc., the Supreme Court has held that the distinctive features of some of the recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. The Supreme Court has ruled that one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review and the first ground is ‘illegality’, whereas the second is ‘irrationality’ and the third is ‘procedural impropriety’. The Supreme Court has explained that to characterize a decision of the administrator as ‘irrational’ the Court has to hold, on material, that it is a decision so outrageous as to be in total defiance of logic or moral standards. According to the Supreme Court, the authority in which the discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. It is held that, in general, the discretion must be exercised only by the authority to which it is

committed and that authority must genuinely address itself to the matter before it and must not act under the dictates of another body or disable itself from exercising discretion in each individual case. What is emphasized by the Supreme Court is that in the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do and it must act in good faith, and must have regard to all relevant considerations as well as must not be influenced by irrelevant considerations and must not seek to promote purpose alien to the letter or spirit of the legislation that gives it power to act nor act arbitrarily or capriciously. According to the Supreme Court, exercise of power, whether legislative or administrative, will be set aside if there is manifest error in exercise of such power or the exercise of the power is manifestly arbitrary. It is ruled that if the power has been exercised on a non-consideration of or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. What is laid down, as a proposition of law, in the said decision is

that if a power, whether legislative or administrative, is exercised on the basis of facts, which do not exist and which are patently erroneous, such exercise of power will stand vitiated. Applying the principle laid down by the Supreme court in the above quoted decision to the facts of the instant case, this Court finds that there was no material before the Government on the basis of which, the decision to designate the lands in question for educational use could have been taken more particularly when SUDA itself had proposed to keep the lands in question in residential zone and it was pointed out by the Chief Town Planner that educational purpose was permissible in residential zone also. In the instant case, the record shows that the power under Section 17(1)(c) of the Act has been exercised on a non-consideration or non-application of mind to the relevant factors and, therefore, will have to be regarded as manifestly erroneous.

19. In ***Atyant Pichhara Barg Chhatra Sangh & Anr. (supra)***, reservation in professional/technical

college was provided as under:

Scheduled Case	14%
Scheduled Tribe	32%
Extremely Backward Classes	18%
Backward Classes	09%
Total	***73%***

In a petition, the High Court clarified that it would be open to the State to fix appropriate percentage of quotas with respect to each individual, class and category, as it might objectively and fairly decide, constituting sum total of 50%. Pursuant to such clarification made by the High Court, a resolution was issued by the State Government providing reservation as under:

Scheduled Case	10%
Scheduled Tribe	26%
Other Backward Category	14%
Total	***50%***

After holding that the Division Bench did not appreciate that the Full Bench had given to the Government the limited liberty to bring down the percentage of reservation from 73% to 50% for an

interim purpose and did not give any direction with respect to the amalgamation of categories, the Supreme Court held that the amalgamation of the two classes of people for reservation would be unreasonable as two different classes were treated similarly which was in violation of the mandate of Article 14 of the Constitution. The Supreme Court further observed that the State had failed to show any new circumstance, except for a bald statement that the same was done after careful application of mind and due deliberation by the highest policy making body, i.e., the Council of Ministers. The Supreme Court noticed that there were no material or empirical data to indicate that the circumstances had been changed nor the State had undertaken any study, research or work. In such circumstances, the Supreme Court held that to suggest that the Council of Ministers had applied their mind and had reached a decision was arbitrary and unreasonable.

20. This Court has considered the decisions cited by the learned Advocate General in (1) ***TATA Cellular vs. Union of India, (1994) 6 SCC 651***; and

(2) ***BALCO Employees' Union (Regd.) vs. Union of India & Ors., A.I.R. 2002 SCC 350***, in support of the appeals. There cannot be any dispute regarding the principles laid down in the reported decisions, but this Court is of the opinion that those principles are not applicable in the peculiar facts and circumstances of the case and the matter will have to be viewed in the light of principles laid down in ***State of NCT Of Delhi & Anr. (supra)***.

21. The contention that the impugned judgment deserves to be set aside in the light of the final report based on 'A Study on Assessment of Educational Need In Surat Urban Development Authority (SUDA) Area for the year 2011' prepared by School of Planning, CEPT University, Ahmedabad, cannot be accepted. In ***Banglore Development Authority & Ors. (supra),*** the Supreme Court has held in paragraph 63 of as under:

> "*Recently in* ***Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chennai & Ors., JT 2005 (8) SC 18,*** *this Court noticed:*
>
> "*In* ***Commissioner of Police, Bombay v.***

Gordhanda Bhanji *[AIR 1952 SC 16], it is stated:*

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Yet again in ***Mohinder Singh Gill*** *(supra), this Court observed:*

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in ***Gordhandas Bhanji.*****"**

Referring to ***Gordhandas Bhanji*** *(supra), it was further observed: "Orders are not like old wine becoming better as they grow older."*

[The said decisions have been followed by this Court in ***Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia & Others,*** *[(2004) 2 SCC 65]."*

The same principle has been reiterated by the Supreme Court in other reported decisions, which are relied upon by the learned Senior Advocates for the petitioners.

22. On the facts and in the circumstances of the case, this Court is of the opinion that the appellant cannot be permitted to rely on the additional evidence, which was permitted to be produced on the record of the appeals nor on the basis of statements made in the said report, this Court can come to the conclusion that there was sufficient material before the Government to justify the decision to designate the lands in question for educational use. Having regard to the facts of the case, this Court is of the opinion that the learned Single Judge did not commit any error in quashing the notification impugned in the petitions on the ground that there was no material before the Government on the basis of which the decision to designate the lands for educational purpose could have been arrived at.

In view of the above discussion, this Court is of the opinion that there is no substance in the two appeals filed by the State Government and they are liable to be dismissed.

23. This brings the Court to consider the Cross-Objections filed by the original petitioners in Letters Patent Appeal No.1453 of 2005.

24. Mr.S.H.Sanjanwala, learned Senior Advocate for the petitioners in Special Civil Application No.12001 of 2004, contended that the principle provided by Section 127 of the Maharashtra Regional Town Planning Act, 1966, that once reservation has lapsed, the lands would be deemed to be released from such reservation and shall become available to the owners for the purpose of development or otherwise permissible in the case of adjacent lands under the relevant plan, should be applied to the facts of the instant case and as the lands in question are surrounded by the lands to be used for residential purpose, the designation of the lands

for educational use should be set aside. What was maintained by the learned Senior Advocate for the petitioners was that once the reservation of the lands for South Gujarat University lapsed, original residential zone as per plan sanctioned in the year 1986 surfaced and got automatically revived after which there was no question of designating the lands for educational use and, therefore, the petition should have been allowed. It was contended that *rule* was made absolute by the Division Bench in Special Civil Application No.6519 of 1998, which means that the prayer (A) to direct the respondent No.1 to treat the lands of the petitioners as having been designated in the residential zone and to restrain the respondents from interfering with the lands of the petitioners in any manner, stood granted as a result of which the lands in question could not have been designated for educational use. It was emphasized by the learned Senior Advocate for the petitioners that the lands situated at Bhavnagar, which were subject matter of the earlier petitions, and the lands of the petitioners were similar in all respects, but the lands situated at Bhavnagar were

designated in the residential zone after the judgment of the High Court, whereas the lands of the petitioners were designated for educational use arbitrarily and, therefore, the decision to designate the lands for educational use, should have been set aside by the learned Single Judge. According to the learned Senior Advocate for the petitioners, use of the lands for educational purpose is permissible in almost all zones except obnoxious and hazardous zone and as it was not necessary to designate the lands of the petitioners for educational use, the petition also should have been allowed on this ground. What was maintained before the Court was that, in fact, the lands have been reserved for educational purpose contrary to the principle laid down by this Court in *Palitana Sugar Mill Pvt.Ltd. v. State of Gujarat, 2001 (2) G.L.H. 294*, as confirmed by the Supreme Court, without recording the satisfaction as contemplated by Section 17(2) of the Act and, therefore, the impugned notification should have been set aside. The learned Senior Advocate submitted that the decision to designate the lands for educational use

should have been set aside by the learned Single Judge on the ground that it was totally unfair as the Government had not considered the facts that: (1) by putting the lands in educational zone, the petitioners would be totally deprived of optimum use of the lands for another purpose except educational purpose; (2) they are not in a position to set up college, hostel or other educational institution and, therefore, no fruitful purpose would be served by designating theirs lands for educational purpose; and (3) nor would they get any purchaser for their properties for the educational use. Mr.Sanjanwala, learned Senior Advocate for the original petitioners, pleaded that while setting aside the notification dated September 28, 2004 designating the lands of the petitioners for educational use, the learned Single Judge should have permitted the petitioners to use their lands for residential purpose by granting prayers claimed in paragraphs 12(a) and 12(c) of the petition and, therefore also, the Cross-Objections should be allowed. Thus, in short, by filing the Cross- Objections, the original petitioners have asserted that the judgment of the

learned Single Judge impugned in the two appeals, which is in their favour, should also be upheld on the above referred to grounds. In support of these submissions, the learned Senior Advocate for the petitioners relied upon the decisions in (1) ***Palitana Sugar Mills vs. State of Gujarat, 2001 (2) G.L.H. 294***; (2) ***Bhavnagar University vs. Palitana Sugar Mills (P) Ltd., (2003) 1 SCC 111***; (3) ***Municipal Corporation of Greater Bombay vs. Dr.Hakimwadi Tenants Association & Ors., A.I.R. 1988 SC 233***; (4) ***Madan Mohan Pathak & Anr. vs. Union of India & Ors., (1978) 2 SCC 50***; and, (5) ***Jilubhai Nanjibhai Khachar & Ors. vs. State of Gujarat & Anr., 1995 Supp. (1) SCC 596.***

25. Mr.S.N.Shelat, learned Senior Advocate for the petitioners in Special Civil Application No.12001 of 2004, contended that Section 12(2)(o) of the Act does not provide for designation for educational use, but the lands can be designated under Section 12(2)(a) of the Act and as the State Government has consciously exercised powers under Section 12(2)(o) of the Act, the impugned

notification designating the lands of the petitioners for educational use, deserves to be set aside on this additional ground. According to the learned Senior Advocate for the petitioners, the proposition, which emerges from the provisions of the Act for sanction of the development plan are; (1) the State Government can provide for reservation for the purposes specified in clauses (b), (d), (f) or (n) of Section 12(2) of the Act; (2) the State Government can provide reservation of land for statutory authorities under Section 12(2)(k); and, (3) under Section 12(2)(o) of the Act, the State Government can provide reservation for public or other purposes as approved by the authority, and as in the instant case, the lands of the petitioners have been reserved for educational use, it was obligatory duty of the State Government under Section 17(2) of the Act to record satisfaction that the authority would be able to acquire the lands either by agreement or by compulsory acquisition and in absence of such satisfaction, the impugned notification should have been set aside. The learned Senior Advocate for the petitioners referred to the

provisions of Section 20 of the Act and argued that the State Government is duty bound to acquire the lands either by agreement or under the provisions of the Land Acquisition Act, 1894 for the purpose specified in clauses (b), (d), (f), (k), (n) or (o) of Section 12 (2) of the Act and if within specified period, steps are not taken for acquisition or purchase, the reservation would lapse and, therefore, the State Government was not justified in designating the lands for educational use after the judgments of the High Court and the Supreme Court. It was maintained that educational use is a public purpose, which can be accomplished through the agency that is to be approved under Section 12(2)(o) of the Act by the Area Development Authority or by the State Government and, therefore, the designation of the lands of the petitioners for educational use should have been treated as reservation of the lands for educational use and the same should have been set aside in view of the decisions of the High Court and the Supreme Court. After referring to the provisions of the Bombay Town Planning Act, 1954, it was contended that the provisions of Sections 7(3),

10(2) and 11 of the Bombay Town Planning Act, 1954 are *pari materia* with the provisions of the instant Act and in that view of the matter, the designation of the lands of the petitioners for educational use should have been treated as re-reservation by the learned Single Judge. The learned Senior Advocate argued that the lands' use required to be designated is specified under Section 12(2)(a) of the Act and as the said Section is exhaustive in nature, it was open to the Government to sub-categorize the same, but there could not have been any exclusive educational zone as was sought to be provided by the impugned notification and, therefore, the learned Single Judge should have quashed the said notification. The learned Senior Advocate emphasized that the educational zone is unworkable because the provisions of the South Gujarat University do not provide for establishment of a college in educational zone nor the provisions of the Development Control Regulations provide that the colleges are to be established in educational zone and, therefore, Cross-Objections filed by the petitioners should be allowed. What was pointed out

by the learned Senior Advocate for the petitioners was that the reasoning of the learned Single Judge that Section 12(2)(o) of the Act is enabling provision, which empowers the Government to designate use of the lands, is unjustified and, therefore, the same deserves to be set aside. The learned Senior Advocate contended that the expression *"such other proposal"* appearing in Section 12(2)(o) of the Act refers to the noun *'reservation of the lands'* under Section 12(2)(k) of the Act and, therefore, after treating the designation of the lands for educational use as reservation, the same should have been quashed by the learned Single Judge. In support of these submissions, the learned Senior Advocate, placed reliance on the decisions in (1) ***K.L.Gupte vs. The Municipal Corporation of Greater Bombay & Ors., A.I.R. 1968 SC 303***; (2) ***Ahmedabad Green Belt Khedut Mandal vs. State of Gujarat through Secretary, 2001 (1) G.L.R. 888;*** (3) ***Hindustan Petroleum Corporation Limited vs. Darius Shapur Chenai & Ors., A.I.R. 2005 SC 3520;*** (4) ***M/s. Bright Brothers (Pvt.) Limited, Bombay, vs. J.K.Sayani, A.I.R. 1976 Madras 55***; and,

(5) ***Ombalika Das & Anr. vs. Hulisa Shaw, A.I.R. 2002 SC 1685.***

26. Mr.Yatin N. Oza, learned Senior Advocate for the respondents in Letters Patent Appeal No.1452 of 2005, contended that the decision of the State Government vide its notification dated May 17, 2001 proposing to drop the reservation on as many as 11 plots within different areas admeasuring 443 acres, exhibits the intention of the State that though SUDA had proposed reservation for education purposes in its revised development plan, the State did not *prima facie* agree with the same and, therefore, the lands of the respondents could not have been designated for educational purpose arbitrarily. According to the learned Senior Advocate for the respondents, the lands situated at Village Magdalla, which were reserved for educational purpose, were dereserved on September 2, 2004, but the lands of the respondents were designated for educational purpose on September 28, 2004 without any basis and, therefore, the said decision is liable to be set aside. According to the learned Senior Advocate for

the respondents, the revised development plan is one which covers the entire territorial area of SUDA, which is running into 722 Kilometres and as in each Town Planning Scheme, at least two plots are reserved for educational purpose, the lands belonging to the respondents should not have been reserved for the said purpose, more particularly in view of the provisions of Section 48-A of the Act, which provide for vesting of the lands in appropriate authority on sanctioning of Draft Scheme by the State Government. It was pleaded by the learned Senior Advocate for the respondents that in the revised Draft Plan, a large chunk of land is reserved for educational purpose, details of which have been given on Page 385 of the compilation of Letters Patent Appeal No.1453 of 2005 and, therefore, the designation of the lands belonging to the respondents should be regarded as unwarranted. The learned Senior Advocate emphasised that there are as many as 233 owners of the lands, who are individually and jointly holding different parcels of the land designated for educational purpose, but after statutory deductions for roads and other

amenities from 150 Acres of lands, only 100 acres of lands would be available for educational purpose, which means that the average holding of the lands by an individual would be 0.42 Acres and as the lands having such a small extent cannot be put to educational use, the designation of the lands for educational use should be regarded as illegal. After placing reliance on the provisions of Section 106 (7) of the Bombay Primary Education Act and Rule 106 (10) of the Bombay Primary Education Rules, 1949, it was argued that it is not practicable to use the lands of the respondents for educational purpose and, therefore, the Cross-Objections filed by the respondents should be allowed. It was maintained that a person desirous of seeking recognition must possess the required area of land as specified in the Bombay Primary Education Act read with the Rules to fulfill the eligibility criteria and as the respondents, who are small and marginal farmers, are not in possession of the required area of the land, their lands could not have been designated for the educational purpose. It was also pointed out by the learned Senior Advocate for the respondents that the

respondents are agriculturists, who do not have financial means, to fulfill all other requirements stipulated by the Bombay Primary Education Act as well as the Rules and Regulations framed therein for setting up a college or other higher educational institution and as the question of utilizing the subject lands by the respondents for educational use stands ruled out, the petition ought to have been allowed by the learned Single Judge. The learned Senior Advocate emphasised that the entire area surrounding the lands of the petitioners is designated for the residential use and, therefore, there existed no reason to designate the lands of the petitioners for educational use. The learned Senior Advocate referred to the notings made by the Secretary of the Department which included the opinion of the Chief Town Planner and contended that the entire nucleous surrounding the subject lands is in residential zone, as a result of which, the designation of the lands of the respondents for any other purpose should have been treated as unfeasible. According to the learned Senior Advocate for the respondents, the proposals for schools,

colleges, and other educational institutions coupled with several other uses are specifically spelt out in clause (b) of Section 12(2) of the Act, and the residuary clause (o) could not have been resorted to for the purpose of designating the lands of the respondents for educational purpose. In support of his submissions, the learned Senior Advocate placed reliance on the decisions in: (1) ***Pratapray N. Kothari vs. John Bregenza, A.I.R. 1999 SC 1666***; (2) ***Varsha Engineering Private Limited vs. M/s.Vijay Traders & Ors., 1983 (1) G.L.R. 126***; and, (3) ***Gujarat State Fertilizers Company Limited, Baroda, vs. Nitrate, 1979 G.L.R. 306.***

27. Mr.Kamal B. Trivedi, learned Advocate General, contended that Section 12 of the Act deals with the contents of a draft development plan so as to generally indicate the manner in which the use of land is to be regulated for development and as subsection (1) of Section 12 is general in nature whereas subsection (2) of Section 12 of the Act is in particular, which provides for various matters to be taken into account while preparing a draft

development plan, the designation of the lands of the respondents for educational purpose cannot be regarded as illegal. It was argued that Section 12 of the Act is not enabling in nature, but merely regulatory in nature since it does not give any power in favour of any authority, but lays down various matters with reference to the use of the lands in which the development is to be carried out and, therefore, the Cross Objections should not be accepted. The learned Advocate General for the appellant pointed out that on an earlier occasion in the case of ***M/s.Palitana Sugar Mills vs. State of Gujarat (supra)***, the words: “designation” and “reservation” were interpreted to mean that they were interchangeable and similarly the words: “use” and “purpose” also should be interpreted to mean that the same are interchangeable as a result of which, the designation of the lands of the respondents for educational purpose under Section 12(2)(o) of the Act cannot be said to be illegal. It was argued that each of the clauses, from clause (a) to clause (o) of Section 12(2) of the Act is separate from each other, but can co-exist with each

other and, therefore, the designation of the lands for public purpose should not be regarded as illegal. It was argued that each of the clauses of Section 12(2) of the Act is separated by punctuation mark and, therefore, clause (o) of Section 12(2) of the Act dealing with 'such other proposals for public or other purposes' cannot be said to be the part of clause (k) or any of the clauses of Section 12(2) of the Act. The learned Advocate General asserted that the words: "such other proposals" used in clause (o) cannot be interpreted to mean that a proposal similar to only one that is mentioned in clause (k) of Section 12(2) of the Act and, therefore, the designation of the lands of the respondents for the educational purpose should be upheld by the Court. It was contended that if the Legislature intended to treat clause (o) of Section 12(2) of the Act as supplemental to clause (k) of Section 12(2) of the Act, nothing prevented the Legislature from adding the language of clause (o) in clause (k) itself in similar fashion in which one finds the last two lines of clause (b) of Section 12(2) of the Act and, therefore, the Cross

Objections of the respondents should be dismissed by the Court. It was maintained that for interpreting subsection (2) of Section 12 of the Act *vis-à-vis,* various clauses of sub-section (2), one cannot give artificial meaning to subsection (1) of Section 12 more particularly when the language used by the Legislature in subsection (2) of Section 12 of the Act is plain and simple and, therefore, it is wrong to contend that since subsection (1) of Section 12 of the Act specifies two things; i.e. (i) indication of the manner in which the use of the land in the area covered by it is to be regulated and (ii) the indication of the manner in which the development plan shall be carried out, clause (a) of Section 12(2) of the Act refers to designation of a particular use of the lands, whereas the remaining clauses, i.e. from clause (b) to (o) refer to the proposals because such an interpretation would amount to doing violence to the plain and simple language used by the Legislature in Section 12 of the Act. It was contended that if the Legislature wanted to treat clause (a) of Section 12(2) of the Act as independent of the remaining clauses at a

higher pedestal, then in that case, the same would have found its place separately in the form of a subsection rather than one of the clauses of subsection (2) of Section 12 of the Act and, therefore, the Cross Objections deserve to be dismissed. After placing reliance on the principles laid down in ***Illachi Devi vs. Jain Society, Protection of Orphans India, (2003) 8 SCC 413,*** and ***State of Jharkhand vs. Govind Singh, A.I.R. 2005 SC 294***, it was pointed out that clause (m) of Section 12(2) of the Act provides for controlling and regulating the use and development of land within the development area and, therefore, the designation of the lands for educational use under Section 12(2)(o) of the Act should not be regarded as illegal. It was argued that the Regulations called “General Development Control Regulations”, which are part of the draft development plan while being framed as per the provisions of Section 12(2)(m) read with Section 13(2)(c) of the Act are supposed to take into account the matters specified in clause (m) of Section 12(2) of the Act, and, therefore, it is permissible for the authorities to designate the

lands in question for the purpose of educational use. It was argued that Section 17(1) of the Act lays down the procedure to be followed by the State Government while sanctioning draft development plan submitted by the Area Development Authority under Section 16 of the Act whereas at the time of sanctioning any draft development plan, the State Government is empowered to effect modifications keeping in mind any of the uses or purposes specified in clauses (a) to (o) of Section 12(2) of the Act, whereas no embargo or prohibition with reference to adoption of any of the uses\purposes specified in any of the above referred to clauses of Section 12(2) of the Act is provided either expressly or impliedly under Section 17(2) of the Act and, therefore, Cross Objections should be dismissed. It was contended that Section 17(2) of the Act refers to earmarking of the lands for the purpose of the Area Development Authority for the use specified in clause (b) or (n) or (o) of Section 12(2) of the Act and as the designation of the lands of the respondents for educational use is not for any authority, the designation for educational use

cannot be regarded as illegal. It was emphasized that Section 20 of the Act deals with acquisition of the lands only if the land is earmarked in any final development plan for the purpose of any Area Development Authority or any other Authority for the uses specified in clauses (b), (n), (o), (d), (f) and (k) of Section 12(2) of the Act and as in the instant case the lands are not earmarked in the final development plan for the purposes of any Area Development Authority or any other Authority, Section 20 of the Act would not be applicable to the facts of the case. It was contended that though the words “designation” and “reservation” have been held to be used interchangeably by the High Court as well as the Supreme Court, the word “designation” merely specifies an action of assigning a particular purpose whereas the word ‘reservation’ signifies an action of dedicating in favour of the specified entity and, therefore, what was earlier reserved for the purpose of acquisition can be designated for the purpose of education to be developed by the concerned owners thereof, which was not possible in case of reservation. It was explained that when any

of the uses is earmarked for the purposes of any Area Development Authority or any other Authority, the owner of the land loses his right to develop his land and a question of acquisition of such land within the period of ten years would arise as provided under Sections 17(2) and 20 of the Act, but when such use/proposal is earmarked generally in respect of any land without reference to any 'Area Development Authority' or any 'Authority', the owner of the said land continues to have a right to develop his land in accordance with the earmarked use/proposal, as a result of which, the Cross Objections, which do not have any substance, should be dismissed. It was argued that what came to be prohibited on earlier occasion was perpetual reservation of the lands in such a manner that in spite of the lapsing of such a reservation after 10 years as per Section 20(2) of the Act, the right of the landowners to develop their respective lands should not be taken away by once again re-reserving the very land, but the Supreme Court did not direct the State Government not to earmark the lands in question for a particular use and, therefore, the

Cross Objections should not be accepted by this Court. It was pointed out that when the proposal of SUDA for residential use of the lands in question was made in the draft plan of year 1981, the same was never sanctioned by the State Government and, hence, it is wrong to contend that proposal to place the lands in residential zone would revive on lapsing of the reservation for education complex of South Gujarat University. According to the learned Advocate General for the appellant, it is wrong to contend that the need to designate the lands of the respondents for educational use is not genuine. The contentions raised by the learned Senior Advocate for the petitioners that they are not in a position to develop the lands because they are agriculturists or that they have no expertise to establish educational institutions or that the size of the respective plot is very small, which rules out use of the land for educational purpose, were sought to be countered by arguing that it is always possible to combine the plots whereby the purpose of education can very well be taken care of. The learned Advocate General referred to the decision of

the Full Bench in ***Dungarlal Harichand vs. State of Gujarat, 7 G.L.R.1152,*** as well as ***Champaklal Becharbhai vs. State of Gujarat, 33 (2) G.L.R. 958,*** and contended that in view of the firm principle of law propounded by the Court that individual rights and interest are bound to be subordinated to wider social interest, the Cross Objections filed by the respondents should be dismissed. The learned Advocate General for the appellant referred to the decision in ***National Centre for Human Settlements & Environment vs. Union of India & Ors., (2005) 12 SCC 369,*** to contend that the Government is the best person to decide whether a particular plot and which plot could be used for what purpose, and as the decision in the instant case to designate the lands of the respondents, is not taken *mala fide,* the Cross Objections should not be accepted by the Court. According to the learned Advocate General, there is a vast difference in the language used in the provisions of the Bombay Town Planning Act, 1954 on one hand and the Gujarat Act on the other and, therefore, reliance on the judgment of the provisions of the Maharashtra legislation is totally

misplaced. The learned Advocate General brought to the notice of the Court the provisions of Section 40 of the Act to plead that 5% is fixed for various purposes including school and, hence, the designation of the lands for educational purpose should not be regarded as illegal. According to the learned Advocate General, the total area to be used for the purpose of schools, etc. is hardly 421 Acres in all at the maximum and, therefore, the designation of the lands of the respondents for educational use should not be regarded as arbitrary or unreasonable. The learned Advocate General further pointed out the percentage of reservation of the lands for educational purpose in the sanctioned preliminary schemes and argued that although the G.D.C.R. may give a scope to provide educational facilities in the Town Planning Scheme for the city like primary or mid-secondary level education, but for higher secondary education, college education, i.e. graduation and post-graduation education, professional and vocational education through larger colleges and institutions with sufficient infrastructure, larger areas are required, which can

be provided only in the development plan and, therefore, the designation of the lands of the respondents for educational purpose cannot be considered to be arbitrary and illegal. In support of these submissions, the learned Advocate General relied upon the decision in ***State of Maharashtra & Ors. vs. Mana Adim Jamat Mandal, (2006) 4 SCC 98.***

28. In rejoinder to the submissions made by the learned Advocate General, Mr.S.H.Sanjanwala, learned Senior Advocate for the original petitioners in Letters Patent Appeal No.1453 of 2005, has reiterated the contentions earlier mentioned.

29. This Court has considered the submissions advanced at the Bar by the learned Senior Advocates for the parties regarding Cross-Objections filed by the petitioners in Special Civil Application No.12001 of 2004 as well as the documents forming part of the petitions. From the record of the case, it is evident that the petitioners in Special Civil Application No.12066 of 2004 have not filed the Cross-Objections. However, the Cross Objections have

been filed by the petitioners in Special Civil Application No.12001 of 2004. It is well settled that a party before the High Court can support the judgment on the grounds found against it, by the High Court even though the Cross Objections are not filed. In ***Jagdish Kumar & Ors. vs. State of H.P. & Ors., JT 2005 (9) SC 484,*** the Supreme Court has considered the question whether the respondents, who had not questioned the correctness of the judgment rendered by the High Court, were estopped from questioning the legality of the promotion decided by the High Court. While considering the said question, the Supreme Court took notice of decisions in ***Ramanbhai Ashabhai Patel vs. Dabhi Ajitkumar Fulsinji & Ors., 1965 (1) SCR 712*** and ***Management of Northern Railway Cooperative Society Ltd. vs. Industrial Tribunal, Rajasthan, Jaipur, and Anr., 1967 (2) SCR 476.*** After noticing the law laid down in the above mentioned decisions, the Supreme Court in ***Jagdish Kumar & Ors. vs. State of H.P. & Ors. (supra),*** has held as under in paragraph 10 of the reported decision:

"*Therefore, the stand of respondent Nos.3 to*

> *18 that even though they have not filed an appeal, they can question correctness of the view adverse to them, on the facts of the present case, needs to be accepted. It is to be noted that in* ***Ramanbhai's*** *case (supra) and* ***Shri Thepfulo's*** *case (supra), it was held by this Court that in "appropriate cases" this Court can permit a non-appealing party to support the impugned judgment even upon grounds which were negatived in that judgment. The Court has to consider whether in the case before it the non-appealing party should be permitted to do so. On the factual background highlighted above, we consider this to be case where the respondent Nos.3 to 18 should be permitted to do so."*

29.1 Further, Chapter VI of the Gujarat High Court Rules, 1993 deals with appeals under Clause 15 of the Letters Patent. Rule 84 of the said Rules in terms provides that except as otherwise provided in this Chapter, the provisions of Order XLI of the Code of Civil Procedure and the Rules therein contained applicable to regular appeals shall apply to Letters Patent Appeal. Thus, there is no manner of doubt that the provisions of Order XLI of the Code of Civil Procedure, 1908 are applicable to the Letters Patent Appeals. Order XLI, Rule 33 of the Code of Civil Procedure, 1908, *inter alia,* provides that Appellate Court shall have power to pass any

decree and make any order, which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or party may not have filed any appeal or objection.

29.2 As observed earlier, this Court will have to consider the Cross-Objections filed by the original petitioners in Special Civil Application No.12001 of 2004 and, therefore, the Court has permitted the petitioners in Special Civil Application No.12066 of 2004 to address the Court on the points, which are decided against them by the learned Single Judge in the judgment, which is impugned in the appeals.

30. Before considering the merits of the Cross-Objections, it would be relevant to notice certain well-settled principles governing the interpretation

of town planning and the rights of the citizens.

30.1 In ***Ghaziabad Development Authority vs. Delhi Auto & General Finance Pvt. Limited & Ors., (1994) 4 SCC 42***, the Supreme Court was called upon to examine the scope of doctrine of '*legitimate expectation of private persons*' with reference to change of land use of the area in the master plan from 'recreational' to 'residential' and again from 'residential' to 'recreational'. In the said case, change of land use of the area in the master plan from 'recreational' to 'residential' and again from 'residential' to 'recreational' was under consideration and it was argued on behalf of the landowners that in view of the principles of legitimate expectation, the said change of land was not permissible. While negativing the said contention, the Supreme Court has held that doctrine of 'legitimate expectation' forms part of rule of non-arbitrariness to ensure procedural fairness in decision-making, but it is not an independent legally enforceable right. What is ruled therein is that requirements of public interest can outweigh

the legitimate expectation of private persons and the decision of a public body on that basis in exercise of statutory power is not assailable. The Supreme Court has held that change of land use of the area in the master plan from 'recreational' to 'residential' and again from 'residential' to 'recreational' did not give rise to a legitimate expectation in a private coloniser owning land in that area that he could develop a housing colony therein merely because he had submitted plan for approval.

30.2 In ***Her Highness Maharani Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel & Ors., (2001) 5 SCC 101,*** it is observed that development and town planning are ongoing processes as a result of which, changes occur from time to time depending upon local needs and, therefore, a master plan cannot be regarded as static.

30.3 Again, in ***Friends Colony Development Committee vs. State of Orissa & Others, (2004) 8 SCC 733,*** what is ruled by the Supreme Court is that

though the Regulation of building activities restricts the freedom of individual property owners to use their property, merely for that reason, the Regulation or Development Plan cannot be termed as arbitrary or unreasonable because private interest in such cases stands subordinated to the public good. What is ruled therein is that power to plan development of cities and to regulate building activity therein flows from the police power of the State and exercise of such governmental power is justified on account of it being reasonably necessary for public health, safety, morals or general welfare and ecological considerations.

30.4 In ***National Centre for Human Settlements and Environment vs. Union of India and Others, (supra),*** the Supreme Court has ruled that change in land use provided in town planning normally should not be interfered with by the Court because the Government is the best person to decide whether a particular plot and which plot should be used for what purpose. What is emphasised therein is that when a challenge is made to any notification, Court

can merely examine whether in issuance of such notification, there has been any illegality or any infraction of any provision.

31. Having noticed the relevant principles laid down by the Supreme Court governing the rights of citizens *vis-a-vis* town planning, this Court is of the view that it would be advantageous to notice certain statutory provisions of the Act.

31.1 The Gujarat Town Planning & Urban Development Act, 1976 was enacted with a view to consolidating and amending the law relating to the making and execution of development plans and town planning schemes in the State of Gujarat. Section 2(iv) defines the term "Area Development Authority", whereas Section 2(x) defines the term "development plan" which means a plan for the development or re-development or improvement of a development area. Section 9 of the Act deals with the development plan and provides that as soon as may be after the constitution of an area development authority for any development area, the area development authority

shall not later than three years after the declaration of such area as development area or within such time as the State Government may, from time to time, extend, prepare and submit to the State Government a draft development plan for the whole or any part of the development area in accordance with the provisions of this Act.

31.2 Section 12 of the Act provides as to what should a draft development plan contain and is as under:

> *"Sec. 12 Contents of draft development plan.*
>
> *(1) A draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out.*
>
> *(2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely :-*
>
> > *(a) proposals for designating the use of the land for residential, industrial, commercial, agricultural and recreational purpose.*
> >
> > *(b) proposals for the reservation of land for public purpose, such as*

schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertainment, public assembly, museums, art galleries, religious buildings, play-grounds, stadia, open spaces, dairies and for such other purpose as may, from time to time, be specified by the State Government;

(c) proposals for designation of areas for zoological gardens, green belts, natural reserves and sanctuaries;

(d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development;

(e) proposals for water supply, drainage, sewage disposal, other public utility amenities and services including supply of electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other industrial development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural or scientific

interest and of educational value;

(j) proposals for good control and prevention of river pollution;

(k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other authority or body established by or under any law for the time being in force;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(m) provision for controlling and regulating the use and development of land within the development area, including imposition of conditions and restrictions in regard to the open space to be maintained for buildings, the percentage of building area for a plot, the location, number, size, height, number of storyes and character of buildings and density of built up area allowed in specified area, the use and purposes to which a building or specified areas of land may or may not be appropriated, the sub-divisions of plots, the discontinuance of objectionable uses of land in any area in any specified periods, parking spaces, loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act;

(n) provision for preventing or removing pollution of water or air caused by the discharge of waste or

other means as a result of the use of land;

(o) such other proposals for public or other purpose as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf."

31.3 Section 17 of the Act deals with the power of the State Government to sanction the draft development plan and is as under:

"Sec. 17 Power of State Government to sanction draft development plan.

(1)(a) On receipt of the draft development plan under Section 16, the State Government may, by notification -

(i) sanction the draft development plan and the regulations so received within the prescribed period, for the whole of the area covered by the plan or separately for any part thereof, either without modifications, or subject to such modifications, as it may consider proper; or

(ii) return the draft development plan and the regulations to the area development authority or, as the case may be, to the authorized officer, for modifying the plan and the regulations in such manner as it may direct :

Provided that, where the State Government is of opinion that substantial modifications in the draft development plan and regulations

are necessary, the State Government may, instead of returning them to the area development authority or, as the case may be, the authorized officer under this sub-clause, publish the modifications so considered necessary in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of such notice; or

(iii) refuse to accord sanction to the draft development plan and the regulations and direct the area development authority or the authorized officer to prepare a fresh development plan under the provisions of this Act.

(b) where a development plan and regulations are returned to an area development authority; or as the case may be, the authorized officer under sub-clause (ii) of clause (a), the area development authority, or, as the case may be, the authorized officer, shall carry out the modifications therein as directed by the State Government and then submit them as so modified to the State Government for sanction; and the State Government shall thereupon sanction them after satisfying itself that the modifications suggested have been duly carried out therein.

(c) where the State Government has published the modifications considered necessary in a draft development plan as required under the proviso to sub-clause (ii) of clause (a), the State Government shall, before according sanction to the draft development plan and regulations, take into consideration the suggestions or objections that may have been received thereto, and thereafter accord sanction to the draft development plan and

the regulations in such modified form as it may consider fit.

(d) The sanction accorded under [clause(a)], clause (b) or clause (c) shall be notified by the State Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan.

(e) The final development plan shall come into force on such date as the State Government may specify in the notification issued under clause (d) :

(2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorized officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) [or clause (o)] of sub – section (2) of section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force.

(3) A final development plan which has come into shall, subject to the provisions of this Act, be binding on the area development authority concerned and on all other authorities situated in the area of the development plan.

(4) After the final development plan comes into force, the area development authority concerned may execute any work for developing, re-developing or improving any

area within the area covered by the plan in accordance with the proposals contained in the development plan."

31.4 Section 20 of the Act provides for acquisition of the lands by the Area Development Authority or any other authority for whose purposes the lands are designated in the final development plan and reads as under:

"*Sec. 20 Acquisition of land.*

(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), [clause (f)], clause (k), clause (n) [or clause (o)] of sub-section (2) of section 12, may acquire the land either by agreement or under the provisions of the land Acquisition Act, 1984.

(2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 I of 1984, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed."

31.5 Section 21 of the Act, which deals with revision of development plan, reads as under:

> "*Sec. 21. Revision of development plan*
>
> *Atleast once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of Sections 9 to 20, shall, so far as may be, apply to such revision.*"

32. From the judgment of the High Court rendered in ***Palitana Sugar Mill Limited (supra)***, it is evident that therein a declaration was sought by the landowners that reservation of their lands by the Town Planning Authority for Bhavnagar University had lapsed because the lands were neither acquired within ten years from the date of coming into force of Final Development Plan nor the same were acquired within six months from the date of service of notice under Section 20 of the Act. The case of the State Government was that the provisions contained in Section 20(2) of the Act enabling service of notice by the landowners for acquisition

within six months on expiry of ten years' period from the date of final development plan did not come into operation where the final development plan was in process of the revision under Section 21 of the Act. After noticing the relevant principles relating to Interpretation of Statutes, the Division Bench held that Section 12 of the Act contemplates the town planning through preparation of draft development, which would contain not only the proposal for designating certain area for residential, industrial, commercial, agricultural or recreational purpose, but it may also contain the proposal for reservation of certain lands for public use. The Division Bench did not think it fit to consider or to give much importance to the debatable issue whether the reservation in development plan for University or educational purpose was covered by Section 12(2)(a) or 12(2)(k) or residuary clause namely 12(2)(o) of the Act. It was held by the Court that Section 17 (2) refers to Section 12(2)(b) of the Act, but there is no mention of clause (k) of the said subsection, which provides for reservation for the purpose of Union, any State, local authority

or any other authority or body established by or under any law for the time being in force and, therefore, the precaution has to be taken under subsection (2) of Section 17 by the Government about its satisfaction, on objections raised, that the authority for which the reservation is proposed to be made, would be in a position to acquire the proposed lands either by agreement or compulsory acquisition within ten years from the date on which the final development plan comes into force. The Division Bench further noted that the omission to mention clause (k) in subsection (2) of Section 17 did not lead to an inference that such precaution was not to be taken when the land was proposed to be reserved for statutory body for educational purpose. According to the Division Bench, such a reservation by the University was undoubtedly for the purpose of establishing educational institutions and covered by clause (b) as well as subsection (2) of Section 17 of the Act. The principle of law laid down by the Division Bench is to be found in paragraph 43 of the reported decision, which is as under:

> *"Reading clause (b) and clause (k) of sub-section (2) of Section 12, we find that where the proposed reservation is for a statutory body like university falling under clause (b) of sub-section (2) of Section 12. Sub-section (2) of Section 17 requiring precaution to be taken to assess capacity of university to acquire the land proposed for reservation would undoubtedly apply to proposed reservation in a development plan for purpose covered in clause (b) and clause (k) of sub-section (2) of Section 12."*

32.1 Thus, from the judgment of the Division Bench, it becomes clear that what was considered by the Division Bench was effect of reservation of the lands of the petitioners therein in the proposed revised plan prepared under Section 21 of the Act after statutory period of ten years and period of six months after service of notice under Section 20(2) of the Act, was over. In the said case, the Court was not called upon to consider the effect of designation of the lands of the petitioners therein for educational use. What is sought to be argued before this Court is that the designation of the lands of the petitioners for educational use is in effect reservation for educational use, which is not permissible in view of the judgment of the Division

Bench quoted above, as confirmed by the Supreme Court.

32.2 Section 17 of the Act deals with power of State Government to sanction draft development plan. On receipt of the draft development plan under Section 16 of the Act, the State Government has power either to sanction the scheme and the regulations so received with the plan or return the draft development plan and the regulations of the Area Development Authority for modifying the plan and the regulations as the case may be or instead of returning the plan and the regulations to the Area Development Authority, publish the modifications so considered necessary in the official gazette or to refuse to accord sanction to the draft development plan. Subsection (2) of Section 17 of the Act in terms provides that where the draft development plan submitted by an Area Development Authority or as the case may be, by the authorised officer, contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of subsection (2) of Section 12 of the

Act and such land does not vest in the Area Development Authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land either by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force. Meaning thereby, before Section 17(2) of the Act is made applicable, it must be established that the draft development plan contains a proposal for reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of subsection (2) of Section 12 for the Area Development Authority and that the lands so reserved do not vest in the Area Development Authority. If the land is reserved for Area Development Authority for the purpose specified in subsection (2) of Section 17 of the Act, it is necessary for the State Government to be satisfied that such authority would acquire the lands either by agreement or compulsory acquisition within ten years from the date on which the final development plan comes into force before including the said reservation in the development plan.

However, in this case, the record does not indicate that the draft revised development plan submitted by SUDA contained any proposal for reservation of lands of the petitioners for the purposes specified in clause (b), clause (n) or clause (o) of subsection (2) of Section 12 of the Act for Area Development Authority. Therefore, it was not necessary for the State Government to be satisfied that the Area Development Authority was in a position to acquire the lands either by agreement or compulsory acquisition within ten years from the date on which the final development plan comes into force. Under the circumstances, even if the designation of the lands for educational use is construed to mean reservation, the same cannot be considered to be contrary to the provisions of Section 17(2) of the Act. Similarly, Section 20 of the Act, which deals with the acquisition of lands, *inter alia,* provides that the Area Development Authority or any other authority for whose purpose the land is designated in the final development plan for any purpose specified in clauses (b), (d), (f), (k), (n), and (o) of subsection (2) of Section 12 of the Act, may

acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894. The record of the instant case does not indicate that the lands of the original petitioners have been designated for educational use for the purpose of Area Development Authority or any other authority. Under the circumstances, even if the designation of the lands of the petitioners for educational use is treated as reservation, the designation would not be contrary to the judgment of the Division Bench because it is not for the purpose of Area Development Authority or any other authority, as contemplated by Section 20 of the Act. What came to be prohibited on earlier occasion by this Court and the Supreme Court in the case of the petitioners was perpetual reservation of their lands for Area Development Authority or for Bhavnagar University, which was an authority contemplated by the Act in spite of lapsing of such a reservation after ten years as per Section 20(2) of the Act. However, there is no manner of doubt that neither the High Court nor the Supreme Court has directed the State Government not to earmark the lands in question for

a particular use. Though the words 'designation' and 'reservation' have been held to be used interchangeably under the Act, as held by this Court, the ordinary meaning of the words 'designation' merely specifies an action of assigning a particular purpose whereas the words 'reservation' signifies an action of dedicating in favour of the specified entity. If one were to go by the said ordinary meanings, the lands of the petitioners were earlier reserved for education complex of South Gujarat University, which lapsed since the lands were not acquired for the said purpose and now what is sought to be done by the authorities by designating the lands for educational use, is to see that the lands are developed by the concerned owners only for the purpose of education. Merely because Section 17(2) refers to 'purpose specified in clause (b) or clause (n) or clause (o) of subsection (2) of Section 12' or merely because Section 20(1) of the Act refers to purpose specified in clauses (b), (d), (f), (k), (n) or (o) of subsection (2) of Section 12 of the Act, it does not mean that the said purpose cannot be earmarked with

reference to any land while preparing the draft revised development plan. In other words, the land can be earmarked for any purpose under clause (o) of subsection (2) of Section 12 of the Act and, there would be no obligation to acquire the same within the meaning of Section 17(2) and Section 20(1) of the Act if the land is not earmarked for the purpose of Area Development Authority or any other authority.

33. In view of the above discussion, the plea that the designation of the lands of the petitioners is contrary to the the earlier judgment of the High Court as confirmed by the Supreme Court and, therefore, deserves to be struck down, cannot be accepted. The plea that clause (o) of Section 12(2) of the Act dealing with “such other proposals for public or other purposes” should be treated as part of clause (k) of Section 12(2) of the Act and, therefore, the lands in question could not have been designated for educational use, cannot be accepted. The principles laid down in ***A.I.R. 1976 Madras 55*** and ***A.I.R. 2002 SC 1685***, do not help the case of the

petitioners in canvassing the point that the words “such other proposals” used in clause (o) should be interpreted to mean a proposal similar to only one that is mentioned in clause (k) of Section 12(2) of the Act. The interpretation of the word "such" in the said decision on the contrary suggests that clause (o) refers to proposal similar to anyone of those referred to in clauses (a) to (n) of Section 12(2) of the Act. A meaningful and conjoint reading of different clauses of Section 12(2) of the Act makes it very clear that what is not separately included in clauses (a) to (n) of Section 12(2) of the Act is taken care of by clause (o) of the said subsection. Further Section 12(2)(o) of the Act is couched in widest possible terms. As per Section 12(2)(o), a draft development plan should provide so far as may be necessary other proposals for public or other purposes as may from time to time be approved by the Area Development Authority. It also provides that a draft development plan shall provide so far as may be necessary other proposals for public or other purposes as may be directed by the State Government in this behalf. If the Legislature

had intended to treat clause (o) of Section 12(2) of the Act as supplemental to clause (k) of Section 12(2) of the Act, nothing prevented the Legislature from adding the language of clause (o) in clause (k) itself in similar manner in which one finds the last two lines of clause (b) of Section 12(2) of the Act, which is as under:

> *"(b) Proposals for the reservation of land for public purposes, such as schools, colleges and other educational institutions ..... and for such other purposes as may, from time to time, be specified by the State Government'.*

33.1 Clause (o) can be resorted to for providing proposals for any public or other purposes and it is not necessary to put a restricted interpretation to the same as is sought to be canvassed by the learned Senior Advocates for the petitioners. It is relevant to notice that Section 12(2)(b), *inter alia,* provides that, in particular, a draft development plan shall provide, so far as may be necessary, proposals for the reservation of land for public purpose, such as schools, colleges and other educational institutions, etc. However, as contended

by the petitioners themselves, land situated within residential, industrial, commercial, agricultural and recreational zone can be used for the purpose of education. Therefore, earmarking of use of land for educational purpose other than specified in Section 12(2)(b) of the Act would be permissible only under Section 12(2)(o) of the Act. Section 12(2)(b) of the Act, *inter alia,* provides for construction of school building, college building or building for other educational institutions, but if the State Government wants to use land for any other educational purpose such as, construction of hostel for stay of students, construction of houses for faculty members or employees of educational institutions, construction of library building, construction of sports complex, etc., proposals for such purposes can be made advantageously under Section 12(2)(o) of the Act. Therefore, it is wrong to contend that the scope of provisions of Section 12(2)(o) of the Act is controlled by the provisions of Section 12(2)(b) of the Act or for that matter by Section 12(2)(k) of the Act. The scope of provisions of Section 12(2)(b), 12(2)(k) and 12(2)(o) is quite

different from each other because, as observed earlier, Section 12(2)(b) of the Act deals with proposals for reservation of land for public purpose such as schools, colleges and other educational institutions whereas clause (k) of Section 12(2) deals with proposals for the reservation of land for the purpose of Union, any State or local authority or any other authority or body established under any law and clause (o) of Section 12(2) deals with other proposals for public or other purposes which might not have been contemplated by clauses (a) to (n) of subsection (2) of Section 12 of the Act. Therefore, the impugned notification designating the use of the lands of the petitioners for educational use cannot be construed as without jurisdiction or contrary to the provisions of Section 12(2)(b) or 12(2)(k) of the Act. If the interpretation, as canvassed by the learned Senior Advocates for the petitioners is accepted, Section 12(2)(o) of the Act would be rendered nugatory and one will have to give artificial meaning to subsection (1) of Section 12, which is not permissible in view of the fact that the language used by the Legislature in subsection

(2) of Section 12 of the Act is plain and simple.

34. Having regard to the scheme of the Act, this Court is of the opinion that it is wrong to contend that clause (a) of subsection (2) of Section 12 of the Act refers to 'designation" of use of the lands whereas the remaining clauses, i.e. clauses (b) to (o) refer to "proposals". If this plea is accepted, it would amount to doing violence to the plain and simple language used by the Legislature in Section 12(2) of the Act. If the Legislature wanted to treat clause (a) of Section 12(2) of the Act as independent of the remaining clauses and place the same at a higher pedestal, the same would have found its place separately in form of subsection rather than one of clauses of subsection (2) of Section 12 of the Act. Keeping in mind the cardinal principles of Interpretation of Statutes that if the words of the statute themselves are precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense nor it would be open to the Courts to adopt a hypothetical construction on the ground that such construction is

more consistent with the alleged object and policy, will have to be applied while interpreting the different clauses of Section 12(2) of the Act and, therefore, it would be reasonable to interpret that the lands can be designated for educational use under Section 12(2)(o) of the Act. Therefore, the plea that under Section 12(2)(o) of the Act, the lands of the petitioners could not have been designated for educational use, cannot be accepted and is hereby rejected.

35. Thus, this Court is of the opinion that no case is made out by the original petitioners for allowing the Cross-Objections and the Cross-Objections are also liable to be dismissed.

The judgment impugned in the appeals makes it very clear that what is quashed by the learned Single Judge is final notification dated September 28, 2004 on the ground that there was no material on record to augment the view of the Government.

36. There is no direction by the learned Single

Judge that a fresh exercise must be undertaken by the State Government from the stage of issuance of preliminary notification dated July 22, 2004 by which notifications are proposed in draft revised development plan of the SUDA. It means that the State Government is free not to take any further exercise pursuant to preliminary notification dated July 22, 2004 and approve the draft revised development plan submitted by the SUDA. If the Government is not inclined to undertake further exercise in the matter then the draft revised development plan of the Year-1996 shall be considered by the State Government in accordance with law and appropriate decision will have to be rendered.

37. This brings the Court to consider other relevant factors, which have been pointed by the petitioners for the purpose of assailing the decision of the concerned authority to designate the lands of the petitioners for educational use. As observed earlier, the record does not indicate that the relevant factors were taken into consideration

by the State Government while designating the lands of the petitioners for educational use under Section 12(2)(o) of the Act.

38. However, if the Government is inclined to consider the matter further from the stage of proposed modifications in the revised development plan, which are published in the Official Gazette on July 24, 2004, the relevant factors will have to be taken into consideration by the State Government. Some of the relevant factors, as pointed out by the original petitioners and emerging from the record of the case, are as under: (1) whether the designation of the lands of the petitioners for educational use is in consonance with the '*Existing Land Use Plan*'; (2) in view of the contents of Development Plan Report, is it necessary to designate the lands of the petitioners for educational use; (3) whether the lands not used till date, which were earlier acquired for South Gujarat University, can be used for educational use so as to avoid the use of the lands of the petitioners for educational purpose; (4) Whether the Guidelines issued by the State

Government in the year 1992 for the preparation of development plan were complied with while designating the lands of the petitioners for educational use; (5) whether the need to designate the lands of the petitioners for educational use subsists in view of the G.D.C.R. prepared and forwarded for sanction of the Government; (6) in view of the plots which have been earmarked and allotted to Surat Municipal Corporation under the Development Plan and/or under the Town Planning Scheme, whether, in fact, there is need to designate the lands of the petitioners for educational use; (7) whether it is possible to use the lands of the petitioners for educational use without acquiring them under the provisions of the Land Acquisition Act, 1894; (8) whether the petitioners, who individually hold small parcels of land, will be in a position to put them to educational use in view of the provisions of the Bombay Primary Education Act and the Rules framed thereunder; (9) whether it is necessary to designate the lands of the petitioners for educational use in view of the fact that the lands of the petitioners were earlier reserved for

statutory authority namely, University' and the reservation had lapsed because the lands were not acquired for the purpose for which they were reserved; (10) whether the petitioners, who are small and marginal agriculturists, would be able to develop their lands for educational purpose and generate the required funds and infrastructure; (11) whether the need to designate the lands of the petitioners for educational use is made out in view of the fact that other lands earmarked for educational use in the vicinity of the lands of the petitioners were released from the reservation for educational purpose; (12) whether the lands of the petitioners can be used for educational purpose after placing them into residential zone as demanded by them; (13) whether the right of the petitioners to use the lands is restricted in any manner in view of the fact that the petitioners claim that they are not in a position to use the lands for educational purpose whereas there is nothing on record to indicate that the Government is inclined to acquire the lands under the provisions of the Land Acquisition Act, 1894; (14) whether the purpose of

designating the lands of the petitioners for educational use would be served if the petitioners are not in a position to use their lands for the said purpose; and, (15) whether any useful purpose would be served by continuing with the designation indefinitely.

39. These are some of the relevant factors, which were never considered by the State Government while issuing the final notification dated September 28, 2004 and, therefore, the factors enumerated above will have to be taken into consideration before taking final decision in the matter in accordance with law. If fresh exercise is undertaken by the State Government from the stage of preliminary notification dated July 22, 2004, the competent authority shall invite objections from the petitioners in accordance with the provisions of the Act and the objections, if filed, shall also be taken into consideration over and above the factors, which have been enumerated in this judgment and the same shall be dealt with by a reasoned order in view of the grievance made by the petitioners that the

power has been exercised arbitrarily. The exercise of approving or remitting etc. of the draft revised development plan of the SUDA or the exercise if undertaken from the stage of issuance of notification containing modifications in the said plan shall be completed by the State Government as early as possible and preferably within three months from the date of receipt of the writ.

40. Subject to above referred to directions, the appeals as well as the cross-objections fail and are dismissed. There shall be no orders as to costs.

As the appeals are dismissed, Civil Applications filed therein do not survive and stand disposed of accordingly. Rule is discharged. There shall be no orders as to costs.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra